Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

IN RE APPLICATIONS OF	)	MM Docket No. 93-156
TRINITY CHRISTIAN CENTER OF SANTA ANA, INC., d/b/a TRINITY BROADCASTING NETWORK	)	**BRCT-911129KR**
For Renewal of License of Television Station WHSG-TV, Monroe, Georgia	)	
and	)	
GLENDALE BROADCASTING COMPANY	)	**BPCT-920228KE**
For a Construction Permit Monroe, Georgia	)	

TO: THE COMMISSION

OPPOSITION TO GLENDALE BROADCASTING COMPANY'S MOTION FOR A RULING RE TRINITY'S QUALIFICATIONS AND RELATED RELIEF

Trinity Christian Center of Santa Ana, Inc., d/b/a Trinity Broadcasting Network ("Trinity"), by its undersigned attorney, hereby opposes the Motion for Ruling Re Trinity's Qualifications and Other Relief ("Motion") filed April 29, 1996 by Glendale Broadcasting Company ("Glendale") in the captioned comparative renewal proceeding involving Trinity's WHSG-TV, Monroe, Georgia facility.[1/] Glendale's Motion is without merit. The Motion seeks to waste the Commission's scarce time and resources by answering a question which is not ripe for review. Moreover, the Commission has already ruled three times that not until the comparative renewal proceeding involving WHFT(TV), Miami, Florida is "final" will it determine what impact, if any, that ruling will have on any of Trinity's other broadcast licenses. Accordingly, Glendale's Motion should be dismissed as both procedurally and substantively defective.

[1/] This Opposition is timely filed pursuant to a Motion for Extension of Time filed May 6, 1996.

I. Introduction

1. This proceeding involves the application of Trinity for the renewal of its license for WHSG-TV, channel 63, Monroe, and the mutually exclusive application of Glendale for a construction permit for channel 63. A comparative renewal hearing was designated on June 14, 1993, Trinity Christian Center of Santa Ana, Inc., 8 FCC Rcd 4038 ("Monroe HDO"), and the hearing was conducted on May 17-18, 1994. The Monroe HDO noted that:

> ... any grant of Trinity's renewal application in the [Monroe] proceeding shall be subject to whatever action the Commission deems appropriate in light of the final resolution of issues (a) and (b) as specified in the Hearing Designation Order [8 FCC Rcd 2475 (1973)] in the Miami proceeding, MM Docket No. 93-75. (underlining added)

Similarly, when two misrepresentation and lack of candor issues were added against Glendale in the Miami proceeding for (1) misrepresenting the site availability associated with two LPTV applications (and extensions) which Glendale's president and majority stockholder was involved with, Order, FCC 93M-516, released August 10, 1993, and (2) misrepresenting (overstating) the amount of money that could be reimbursed on the sale of an unbuilt construction permit, Memorandum Opinion and Order, FCC 93M-640, released October 7, 1993, near identical instructions were given as to how the issues would impact the Monroe proceeding, viz.:

> Any grant of Glendale Broadcasting Company's application in the instant proceeding shall be subject to whatever action the Commission deems appropriate in light of the final resolution of the issues specified in Memorandum Opinion and Order, FCC 93M-631, released October 4, 1993, [and Memorandum Opinion and Order, 93M-469, released July 15, 1993] in MM Docket No. 93-75.

2. By the specific terms of these numerous rulings, involving both Trinity and Glendale, it is clear that only after there is a **final** determination on these issues by the Commission, not an ID by an Administrative Law Judge, will any determination be made as to what impact, if any, the resolution of these issues will have in the Monroe proceeding, or any other proceeding. It is therefore entirely inappropriate, not to mention an unnecessary expenditure of time and resources, to attempt an answer on the impact the non-final Miami ruling may have on other Commission proceedings. The logic is simple, any ruling made before a final decision is reached would of course change depending

upon the decision ultimately reached. Accordingly, until a **final** decision is reached in the Miami proceeding (Docket 93-75), Glendale's Motion is simply not ripe for review, and should therefore be dismissed.

II. During the Pendency of the Miami Proceeding the Commission Has Ruled that Only After a "Final" Decision Will It Decide What Impact, If Any, a Miami Ruling May Have on Trinity's Other Broadcast Holdings

3. Glendale argues that Judge Chachkin's initial decision in Trinity Broadcasting of Florida, Inc. (ID), 10 FCC Rcd 12020 (ALJ 1995) (hereinafter Miami ID), denying the renewal of Trinity Broadcasting of Florida, Inc., WHFT-TV, Miami, Florida, must automatically disqualify Trinity from being qualified to hold the WHSG license. However, as explained in greater detail below, the Miami ID is not a final decision, and in designating the Miami Proceeding, the Commission ruled that it intended no further disruption to Trinity, and that Trinity was free to dispose and acquire licenses while the proceeding was pending. Trinity Broadcasting of Florida, Inc., 8 FCC Rcd. 2475 (1993), recon denied, 9 FCC Rcd 2567 (1994) ("Miami Proceeding").

4. In Trinity Broadcasting of Florida, Inc., 8 FCC Rcd. 2475, ¶ 45, the Commission specifically stated:

> ... we are not prepared, at this time, to conclude that the [issues designated] are so fundamental that they would affect the qualifications of ... TBN or its affiliates to hold any station license. See 1986 Character Policy Statement, 102 FCC 2d at 1223. If issues (a) and (b), set forth below, are resolved against ... TBN or its affiliates, the Commission will determine what actions are appropriate in connection with the stations licensed to these entities. In addition, ... TBN and its affiliates are free to dispose of licenses during the pendency of this proceeding ... [and they] may also acquire licenses during the pendency of this proceeding...

Moreover, in denying reconsideration of the Miami HDO the Commission again held that:

> ...on the evidence before us, we could not determine that the charges leading to designation of the WHFT license renewal application are so fundamental as to affect Trinity's qualifications to hold any station license. Trinity Broadcasting of Florida, Inc., 9 FCC Rcd 2567, para. 3 (1994).

These determinations are consistent with the policy articulated in Modification of Grayson Enterprise Policy on Transferability, 53 R.R.2d 126 (1983), which eliminated any requirement that the Commission must deny or hold a group owner's various authorizations in limbo or designate them for

hearing, pending the outcome of a hearing. For the same reason, not until there is a final determination in the Miami Proceeding can any proper determination be made as to the impact, if any, that determination will have in the Monroe proceeding. Unwilling to accept this fact, however, Glendale would have the Commission make a premature ruling now. There is no justification for doing so, and Glendale's Motion should thus be promptly denied.

5. Moreover, without wanting to belabor the point, the Miami ID is not a final action, and thus does not provide a proper basis for the relief Glendale seeks (but is not entitled to). Exceptions in the Miami Proceeding were filed by Trinity on January 23, 1996, and the proceeding pends with the Commission for final decision. Pursuant to rule 1.276(a)(1) the filing of Exceptions automatically stayed the Miami ID, and it is therefore inappropriate to argue it requires the relief Glendale seeks.[2]/

6. There is also no support for Glendale's assertion that Trinity's Monroe license must be denied based on the Miami ID. The Commission has long recognized that the loss of even one license is not only a "significant deterrent," Grayson Enterprises, Inc., 79 F.C.C.2d 936, 939 (1980), but a "severe penalty" to a group owner. RKO General, Inc. (KHJ-TV), 3 FCC Rcd. 5057, 5062 (1988). Indeed, the Miami ID (para. 334) noted that the "loss of [the WHFT-TV] license is a sufficient sanction" and it did not propose Trinity should lose all of its licenses. The Commission also maintains that there is no presumption that "misconduct at one station renders a licensee unqualified to operate other stations." Straus Communications, Inc., 2 FCC Rcd. 7569 (1987). This view was also articulated in the 1986 Character Qualification in Broadcast Licensing, 102 F.C.C.2d 1179, 59 R.R.2d 801, 831 (1986) ("no presumption that misconduct at one station is necessarily predictive of the operation of the licensee's other stations"). Clearly, not until a final decision is reached in the Miami Proceeding, which involves qualifying issues against both Glendale and Trinity, will anyone know what arguments

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[2]/ Because the Miami Proceeding is extremely complicated, there will be future filings which will directly impact its outcome. To the extent a final ruling in the Miami Proceeding is important here, waiting for that final decision is imperative here.

can and should be made on either side of the issue.[3]/ Accordingly, Glendale's arguments in this regard are not only grossly immature, but legally inconsistent with the Commission's policy. Its Motion should therefore be denied.

III. Even if the Miami ID is Not Reversed, The Complexity of the Proceeding Argues for Limiting any Holding to Only Miami, and Not to Any Other Proceeding or Trinity License

7. The Miami Proceeding involved, inter alia, whether Trinity's relationship with National Minority TV, Inc. ("NMTV") complied with two very complicated policies. First, the Commission's 1983 minority preference for LPTV applications, Random Selection Lotteries, 93 F.C.C.2d 952 (1983) ("Lotteries"), and the 1985 full power television multiple ownership rule allowing group owners to hold cognizable interests in two additional stations that are minority owned. Amendment of Section 73.3555, 100 F.C.C.2d 74 (1985) ("Section 73.3555"). In Lotteries, the Commission's goal was to increase minority ownership regardless of operating control. Control was defined purely in terms of equity ownership, including passive equity (such as limited partnerships and beneficial trust interests) so that entities in which minorities own more than 50 percent of the equity could claim the preference even if the minority owners did not have control. The minority status of nonstock corporations such as NMTV was determined by the "composition of the board." Lotteries at 976-77. The Commission explained that the reason it was defining control solely in terms of equity ownership was that this increased the number of entities eligible for minority preference and would serve the intent of Congress that the Commission "evaluate ownership in terms of the beneficial owners." Id. at 976. Indeed, given this expression by the Commission, the Mass Media Bureau agreed in the Miami

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[3]/ The Mass Media Bureau has argued, for example, that Glendale should be disqualified for engaging in active misrepresentation to, and lack of candor with, the Commission. MMB Exceptions filed in Docket 93-75, January 23, 1996. As with the issues against Trinity, however, not until there is a final ruling on Glendale's basic qualifications can it be determined what impact that would have in this Monroe proceeding.

Proceeding that ownership rather than control was determinative for purposes of being able to properly claim a minority preference in LPTV proceedings.[4]/

8. In Section 73.3555, the second policy involved, the Commission also addressed the question of how to define control in the minority ownership context, and noted that "different standards of minority control" applied for different purposes, and concluded that the appropriate standard under rule 73.3555 was "a greater than 50% percent minority ownership interest." Section 73.3555, 100 F.C.C.2d at 95. The rule states: "**minority control** means more than 50% **owned** by one or more members of a minority group." (§ 73.3555)(e)(3)(iii)).[5]/ This reflects virtually the same standard adopted for the minority LPTV preference, i.e., that ownership, not operating control, was determinative. In fact, in the proceeding adopting the full power multiple ownership rule allowing group owners to hold cognizable interests in two additional stations that are minority controlled, Commissioner Dennis Patrick, dissenting,[6]/ clearly articulated the interpretation of the policy held by the majority:

> Under the majority scheme, the right to purchase broadcast stations over the established ceiling turns upon the race of the proposed owners alone. No further showing is required with respect to how these new owners may contribute to diversity. No concern is given as to whether the 51% minority owners will exert any influence on the station's programming or will have any control at all. 100 F.C.C.2d at 101 (underlining added)

9. The Commission plainly contemplated that group owners would be actively involved in the operations of minority licensees under such arrangements. In allowing broadcasters a

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[4]/ See paragraph 304 of the Mass Media Bureau's Findings of Fact and Conclusions of Law filed August 15, 1994, and paragraphs 3 and 4 of its February 28, 1996 Consolidated Reply to Exceptions, both filed in the Miami Proceeding (Docket No. 93-75).

[5]/ Section 202(c)(1)(A) of the Telecommunications Act of 1996, PL 104-104, 110 Stat. 56, eliminated this section of the Commission's rules, and eliminated the restrictions on the number of television stations a person or entity may directly or indirectly own, operate, or control, or have a cognizable interest in, nationwide.

[6]/ The Commission has recognized a statutory interpretation stated in a dissenting opinion which is uncontradicted by the majority is authoritative. Schedule of Fees, 50 F.C.C.2d 906, 907-08 (¶ 5) (1975).

"cognizable interest" in the minority entity (§ 73.3555(e)(1)), the Commission expected that they would contribute substantial "media expertise" as officers and directors.[7]/ That was the goal, and that is what Trinity, after seeking the advice and direction of undersigned counsel, sought to implement in its relationship with NMTV.

10. Accordingly, given the complexity of these minority and multiple ownership policies, and the fact that Trinity and NMTV sought guidance and advice from FCC counsel before moving to implement these policies, it would not only be unjust to disqualify Trinity in the Miami Proceeding, but unjust to use any holding in the Miami Proceeding as grounds for denial of the WHSG license in the Monroe proceeding. Even if the Commission confirms the Miami ID, which interpreted these complicated policies differently than Trinity's (and at the time NMTV's) counsel (and the Mass Media Bureau for that matter), Trinity should not be penalized for any such incorrect interpretation or implementation of the rule since the Commission is internally divided on the right interpretation, with the Mass Media Bureau on one side, and Judge Chachkin on the other.[8]/ As the Court of Appeals has recently stressed, regulations do not provide adequate notice "when different divisions of the enforcing agency disagree about their meaning." General Electric Company v. Environmental Protection Agency, 53 F.3d 1324, 1332 (D.C. Cir. 1995). Due process requires fair notice before drastic sanctions are assessed, and where, as in the Miami Proceeding, "the agency itself struggles to provide a definitive reading of the regulatory requirements, the regulated party is not 'on notice' of the agency's ultimate interpretation of the regulations, and may not be punished." Id. at 1328-29, 1334.[9]/

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[7]/ Officers and Directors are deemed to have a cognizable interest because such persons have significant ability to influence multiple licensees. Attribution Of Ownership Interests, 96 F.C.C. 2d 997, 1025, 1050-51 (1984).

[8]/ When the MMB submitted its Exceptions in the Miami Proceeding it did not retract its previous conclusions regarding its interpretation that only passive ownership is required to qualify for the minority lottery preference (see n.4, supra). The MMB did not, however, argue that the Miami ID should be reversed regarding the loss of Trinity's WHFT-TV license.

[9]/ See also, Rollins Environmental Service v. United States Environmental Protection
(continued...)

11. Both the minority exception in section 73.3555 of the rules and the lottery preference certification implemented new policies, which no broadcaster had any prior experience with, and no decisional precedents had been issued for guidance. In such circumstances, Trinity's reliance on specialized counsel was "particularly appropriate" even if it turns out counsel wrongly interpreted the law. Fox Television Stations, Inc., 10 F.C.C.2d 8452, 8500 (1985) (good faith reliance justified even though FCC found attorney's opinion on the foreign ownership rule "somewhat remarkable"). Certainly the same standard will prevail in the Miami Proceeding, and at any rate, there is no basis for now ruling on the question in connection with Trinity's WHSG license as Glendale requests.[10]/

III. Glendale's Reference to International Panorama TV, Inc. is Completely Misplaced--That Proceeding Found Trinity (and Dr. Crouch) "Innocent" of any Wrongdoing.

12. At page 10 of its Motion, Glendale asserts that the 1983 decision in International Panorama TV, Inc., FCC 83d-4, released January 25, 1983, establishes that Trinity has a history of serious misconduct at the Commission. Contrary to Glendale's arguments, however, International Panorama TV, Inc. (Id. at ¶ 6, n. 38), unequivocally affirmed the good faith and good intentions of Trinity (and Dr. Crouch) in dealing with the FCC.

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[9]/(...continued)
Agency, 937 F.2d 649, 653, 654 (D.C. Cir. 1991) (when agency itself is uncertain of meaning of own rule and agency personnel construe differently, it is arbitrary to find rule clear, and no penalty should be imposed).

[10]/ In two analogous cases involving de facto control and alien ownership violations, complicated areas of the law similar to the minority certification and minority ownership issues involved in the Miami Proceeding, the Commission imposed no sanction and instead allowed the offending licensee to bring itself into compliance. Seven Hills Television Company, 2 FCC Rcd. 6867, 6888-89 (conditioning renewal on license modifying current practice to achieve compliance); and Fox Television Stations, Inc., 10 FCC Rcd. 8452, 8523-24 (permitting licensee in violation of alien ownership benchmark opportunity to comply with benchmark or make showing justifying exception). In the Miami Proceeding, which is the first case under the FCC minority exception policy, Trinity must be given the same chance if a violation is ultimately confirmed by the Commission. Melody Music, Inc. v. FCC, 345 F.2d 730 (D.C. Cir 1965).

13. The context of the International Panorama TV, Inc. decision, which Glendale (and Judge Chachkin) avoids, involved the license renewal hearing of Trinity's KTBN-TV, Santa Ana, California in the early 1980's. Trinity's prior FCC counsel had invoked an attorney-client privilege to withhold documents damaging to Trinity even though Trinity (and Dr. Crouch) had ordered full disclosure in the proceeding. When undersigned counsel, then an associate in the firm, did not agree that the privilege should be claimed and felt the damaging documents he had found in the files must be put on the public record, Trinity (and Dr. Crouch) agreed and the privilege was waived and the documents produced. International Panorama TV, Inc., Id. Indeed, the International Panorama TV, Inc. decision held that "Trinity and Dr. Crouch were 'innocent' of any misrepresentation or wrongdoing." Id.

14. It is manifestly unjust for anyone to argue that the International Panorama TV, Inc. decision shows that Trinity has a record of serious misconduct with the Commission. Rather, what the decision shows is that Trinity (and Dr. Crouch) have always endeavored to deal with the Commission in good faith with good intentions, and have disclosed damaging material even to the point of waiving appropriate privileges. Glendale's argument in this regard must therefore be rejected en toto.

IV. Conclusion

15. Glendale's Motion must be denied since it seeks review of a question not ripe for consideration. Such a request also contravenes the decision of the Commission in the Miami HDO (and reconsideration), the Monroe HDO, and in two separate Orders noting that the designation of qualifying issues against Glendale in the Miami Proceeding will be handled in the Monroe Proceeding just like the issue involving Trinity, i.e., no decision can be reached until the Miami Proceeding becomes final. In addition, there is no final decision upon which Glendale's requested remedy relies, since rule 1.276(a)(1) provides that the filing of Exceptions automatically stays the effectiveness of an initial decision.

16. Moreover, Glendale ignores the complexity of the Miami Proceeding, and fails to acknowledge that when an agency either has a conflict within its own branches as to the meaning of

one or more of its policies or rules, or it fails to clearly articulate how its licensees can comply with the rule, no sanction is appropriate. Finally, contrary to Glendale's arguments, the International Panorama TV, Inc. case held that Trinity was "innocent" of any wrongdoing. The decision therefore can not properly be cited to support the argument that Trinity has a record of serious misconduct with the Commission. Quite to the contrary the decision shows Trinity has always dealt with the Commission in good faith.

WHEREFORE, the foregoing considered, Trinity respectfully requests that Glendale's Motion be denied.

Respectfully submitted,

By: _____
Colby M. May
Attorney for Trinity Christian Center of Santa Ana, Inc., d/b/a Trinity Broadcasting Network

Suite 304
1000 Thomas Jefferson Street, N.W.
Washington, D.C. 20007
(202) 298-6348

May 29, 1996

CERTIFICATE OF SERVICE

I, Glinda M. Corbin, office manager, in the law offices of Colby M. May, hereby certify that I have caused to be sent this 29th day of May 1996, via first class U.S. mail, postage prepaid, a copy of the foregoing **OPPOSITION TO GLENDALE BROADCASTING COMPANY'S MOTION FOR A RULING RE TRINITY'S QUALIFICATIONS AND RELATED RELIEF** to the following:

The Honorable Joseph Chachkin *
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W., Room 226
Washington, D.C. 20554

Robert A. Zauner, Esq. *
Complaints and Investigations Branch
Federal Communications Commission
2025 M Street, N.W., Room 7212
Washington, D.C. 20554

Gene A. Bechtel, Esq.
John J. Schauble, Esq.
Bechtel & Cole, Chartered
1901 L Street, N.W., Suite 250
Washington, D.C. 20036
(Attorneys for Glendale Broadcasting Company)

By: Glinda M. Corbin
Glinda M. Corbin

*Hand Deliver